App F IX-4

Previous References

1954-55 (CH)

File No 86-54-

Serial Nos 4, 5,

Later References

MYSORE GOVERNMENT SECRETARIAT

Serial Nos Two

P-33
E

Part B for July 1954

SUBJECT

Powers of the Municipal Commissioner under the city Municipalities Act, Mysore City Municipality

WD 04867—GPB—9 000—11 1 54

17
20,

The Municipal Commissioner
Davanagere city Municipality
L 4472/ Dated 22 7 54

States that it is not desirable to empower the MC comm' to enter into the contracts without the approval of the MC council

JNB
9/9/54

G R S APP F III—1]

①

GENERAL AND REVENUE SECRETARIAT

( )

NOTES

File No

FILE HEADING

powers of the Municipal Council, under the City Municipalities Act.

FROM

The Municipal Council Dawanpore city rlg

No Pet. 25/51-52 Dated 31/1/52 Received

Diary No 6900/mlg	Enclos	Spare copies	Serial No

BRIEF ABSTRACT OF LETTER

Requests clarification whether the municipal Council has power a Resolution could otherwise and Supersede the Statutory powers granted to the Council under the Act

FILE AND ORDERS

Orders of the L S G Secy

For a rde

1) Secs 245 to 254 of the City Municipalities Act deals with the powers of the municipal Council. These powers are conferred primarily by the Act on the municipal Council and Council under the provisions of the Sections referred to above the Council after such an appointment

First Sheet

WD 010865—GPB—20 000—2-8-50

It made clear a city Municipality be
permitted to exercise these powers of the Council
perhaps stating that the municipal Council
may have effective assistance of the
Council and the relieved of the onerous
duties now in city Municipality
to keep up the powers by the Council
under these specific provisions Council
perhaps be constituted to have such
the privileges and inherent powers
of the municipal Council

3) under Sec 22 of the Act the municipal
Board of a municipality except in the
municipal Council and the exceptions
referred to in the Section perhaps
Refer to certain functions which
may be necessitated by circumstances
to be performed by the Board under the
their powers of control in chapter XIII,
in the case of the petition from
one Jawad Rahman regarding allotment
of a shop in the new city Bazaar,
Where the Local Secretary has observed
that the Corporation as the Supreme
municipal authority can also
Exercise the powers of Supervision
over the and Revision over the
Standing Committees and the Council.
Apply the same argument the municipal

Serial No

as a city Mcli shall also
Council / Boards to deem to have the
powers & overriding the Commissioner.
notwithstanding any other provisions
4) The Commissioner has filed
two specific cases where the ~~mayor~~
Governor city municipal Council is
stated to have interfered with the
Statutory powers. They are
(1) passing of resolutions by
the municipal Council to the effect
that particular license papers be brought
before the Council for Consideration
(2) Requesting the Commissioner that
all tenders must be opened by the Council
alone
5) As regards both (1) the issue
of licenses ~~must~~ be at his by the
Commissioner would be at his discretion
though he is guided as this
Schedule by Rules and Bye-laws the Commissioner
has to exercise this power in the
first instance and if the applicant
is dissatisfied with the decision of the
Commissioner, then the municipal Council may
step in on the application of the person
concerned in a Recessionary Capacity
of the resolution of the Council to
treat particular applications for licenses
before the municipal Council without the

NOTE—Contn Sheet

Powers of the MC Commr under the city Municipalities Act

File No 6908/mc (4) of 19

General and Revenue Secretariat

Serial No

Coercer & passing any orders on them if may amount to usurping the powers of the Coercer and Exposing them affecting the prestige which may not be a healthy practice. To be suggested in what manner the provisions of have to be detailed on this point may be necessary

b) As Regards item 2 above under Sec 453 (3) the municipal Council may under certain circumstances authorise the Coercer for Reasons to be Recorded to enter into a Contract without even inviting tenders or without accepting any tender which he may Receive after having invited them. When the powers of the Council are thus Technically are so sweeping nothing perhaps Could debars the Council to suppose the Coercer to open the tenders in the Council

7) Subs for orders.

Abe 28/2/52

Sd 29/3/52

8) The Municipal Commissioner reports that the Municipal Council have interfered ~~into~~ with the statutory powers of the Municipal Commissioner and that the Municipal Council want that they subject in which he (the Municipal Commissioner) has exclusive powers, must be brought for discussion before the Municipal Council The First example he quotes is the granting of license for construction of buildings The Commissioner states

Serial No

that "the Act empowers the Municipal Commissioner under Section 115 of the Mysore City Municipalities Act for grant or rejecting licenses" and that "resolution in such cases are being passed by the Municipal Council to the effect that particular license paper should be brought before the Council for their consideration " As regards this point, a close study of Section 115 clearly shows that it is the Municipal Council that is empowered either to give or reject permission to construct, alter, add or re-construct houses according to the plan furnished by the owner of the site or building

9) But Section 245 states "A Municipal Commissioner shall exercise the powers here in after specified, and such other executive powers as may be delegated to him by the Municipal Council under the provision of this Act " Sub-section 3 states that the Municipal Commissioner may give permission exercise all such powers exercised and performed by a Municipal Council under any of the provisions contained in the following Sections, namely - Secs 73, 81 and 115

10) The Commissioner considers that he is given exclusive powers under this Sub-section 3 and also sub-section 2 But proviso to Sub-section 3 states as follows -

"The powers conferred on the Municipal Council by or under the provisions contained in clause(b) of Sub-Section (6) of Section 115 shall not be exercised by the Municipal Commissioner, except subject to the general or special orders of the Municipal Council or in the absence of such orders with the previous approval

No 6908/MC Powers of the Municipal Commissioner under the City Municipalities Act

File No (6)

General and Revenue Secretariat

Serial No

of the Municipal Council " That is to say the Municipal Commissioner may give written consent or permission and perform all such duties as may be made by the Municipal Council under Section 115 except in those cases which fall under clause (b) of Sub-section 6 of Section 115 for the exercise of which previous approval of the Municipal Council is necessary According to Section 249 'no appeal shall lie to the Municipal Council in respect of any order passed or anything done by a Municipal Commissioner in the exercise of powers conferred upon him by or under the provisions of the Act except in the case of an order passed under any of the following provisions viz , clause (b) of Sub-section (6) of Section 115 " Therefore, no appeal shall lie to the Municipal Council against the order passed by the Commissioner under other provisions of Section 115 When no appeal lies, a point for consideration is whether the Municipal Council can bring a subject relating to Section 115 (except clause (b) of Sub-section 6 of Section 115) for discussion in the meeting after the order is passed by the Commissioner As there is no appeal, a petition by the party to the Municipal Council after orders are passed by the Municipal Commissioner has to be rejected by the Municipal Council To this extent the provisions of the Act are beyond doubt When once the order is passed by the Municipal Commissioner, the Municipal Council cannot revise the order of the Commissioner, as no

Serial No	
	such power is given to the Council anywhere in the Act
	When the order of the Commissioner is contrary to the
	provisions of the Act (i e , unlaful) then the Deputy
	Commissioner may take action under Section 218 of the City
	Municipalities Act and then Government can pass final
	orders Thus it is clear that the order passed by the
	Commissioner under certain provisions of Section 115 cannot
	be revised by the Council
	(11) Another aspect of the same question is whether a
	Municipal Council can pass a resolution stating that parti-
	cular ~~Commercial passages resolutions stating~~ license papers
	should be brought before Council for their consideration
	As the Municipal Council is competent to give or refuse
	permission, under Section 115 of the City Municipalities
	Act, it can say that the particular license record must be
	brought for consideration of the Council and the Council
	can decide the case To that extent the Council is
	within its powers and it can resolve that a particular
	license record should be brought up for discussion But
	if it passes a resolution that the Municipal Commissioner
	should not pass any order in respect of particular license
	record, then that resolution is ultra vires because it
	will tantamount to taking away the powers given to the
	Municipal Commissioner by statute As both the Council
	and the Commissioner are expected to carry out the provisi
	ons
	of the Act, their decisions in respect of a particular
	license must, in the ordinary course, be one and the same
	as long as the orders of both are according to the provi-
	sions of the Act If the order of either is contrary to

TE-Contn Sheet

No 6908/mc Powers of the Municipal Commissioner under the City Municipalities of 1 Act (6)

File No

General and Revenue Secretariat

Serial No

of the Municipal Council " That is to say the Municipal Commissioner may give written consent or permission and perform all such duties as may be made by the Municipal Council under Section 115 except in those cases which fall under clause (b) of Sub-section 6 of Section 115 for the exercise of which previous approval of the Municipal Council is necessary According to Section 249 'no appeal shall lie to the Municipal Council in respect of any order passed or anything done by a Municipal Commissioner in the exercise of powers conferred upon him by or under the provisions of the Act except in the case of an order passed under any of the following provisions viz , clause (b) of Sub-section (6) of Section 115 " Therefore, no appeal shall lie to the Municipal Council against the order passed by the Commissioner under other provisions of Section 115 When no appeal lies, a point for consideration is whether the Municipal Council can bring a subject relating to Section 115 (except clause (b) of Sub-section 6 of Section 115) for discussion in the meeting after the order is passed by the Commissioner As there is no appeal, a petition by the party to the Municipal Council after orders are passed by the Municipal Commissioner has to be rejected by the Municipal Council To this extent the provisions of the Act are beyond doubt When once the order is passed by the Municipal Commissioner, the Municipal Council cannot revise the order of the Commissioner, as no

Serial No

such power is given to the Council anywhere in the Act When the order of the Commissioner is contrary to the provisions of the Act (i e , unlaful) then the Deputy Commissioner may take action under Section 218 of the City Municipalities Act and then Government can pass final orders Thus it is clear that the order passed by the Commissioner under certain provisions of Section 115 cannot be revised by the Council

11) Another aspect of the same question is whether a Municipal Council can pass a resolution stating that particular ~~Council xxxxpassxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ license papers should be brought before Council for their consideration As the Municipal Council is competent to give or refuse permission, under Section 115 of the City Municipalities Act, it can say that the particular license record must be brought for consideration of the Council and the Council can decide the case To that extent the Council is within its powers and it can resolve that a particular license record should be brought up for discussion But if it passes a resolution that the Municipal Commissioner should not pass any order in respect of particular license record, then that resolution is ultra vires because it will tantamount to taking away the powers given to the Municipal Commissioner by statute As both the Council and the Commissioner are expected to carry out the provisions of the Act, their decisions in respect of a particular license must, in the ordinary course, be one and the same as long as the orders of both are according to the provisions of the Act If the order of either is contrary to

Serial No

the provisions of the Act, that order will be null and void However, the Municipal Council will be within its powers when it says that a particular license record should be brought up for consideration of the Council It does not mean that the Commissioner is prohibited from passing a separate order independent of the Council resolution, if he desires that he should pass an order according to the provisions of the Act However in view of the smooth working of the Municipal administration, it is better to leave the matter in these particular cases, to the Municipal Council and guide them properly So much about the license records

12) As regards tenders, the Municipal Commissioner states that the Municipal Council has passed a resolution on 23rd December 1951 to the effect that all tenders must be opened in the Council alone Section 41 deals with contracts and the Municipal Council is competent to lease, sell and contract Sub-section 5 states by whom tenders should be invited Sub-section 9 lays down that the provisions of this Section (Section 41) shall be subject to the provisions of Section 57 and chapter XIII and chapter XIV and chapter XIII deals with the appointment of Chief and other Municipal officers, and their powers In chapter XIII, Sub-section (d) of Section 236 lays down that the Chief Officer "may, subject to the control of the President and to the provisions of Section 41 -

1) enter on behalf of the Municipal Council into contracts which do not involve an expenditure of over fifty rupees and
2) invite, on behalf of the Municipal Council and

Serial No

by public notice, tenders for the execution of any approved work or for the supply of any materials or goods required by the Municipal Council

But Section 41(1) states every Municipal Council shall be competent to lease to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and powers Thus the powers of the Chief Officers are subject to the powers of the MunicipalCouncil

13) In Chapter XIV, Section 253 deals with the powers of the Municipal Commissioner regarding tenders for contracts Sub-Section 1 of Section 253 reads as follows "Except as is otherwise provided in Sub-section 3, a Municipal Commissioner shall, atleast seven days before entering into any contract for the execution of any work which involves an expenditure exceeding Rs 500/-, give notice by advertising in the local newspaper, invite tenders for such contract " The first clause that is underlined is very significant, because sub-section 3 says "the Municipal Council may, subject to the provisions of Section 41, authorise the Municipal Commissioner to enter into a contract without inviting tenders as herein provided or without accepting any tenders which he may receive after having invited them " Thus the powers of the Commissioner in this regard are not only subject to provisions of Section 41 but also subject to the power of the Municipal Council which may, for reasons which shall be recorded in its proceedings, authorise the Municipal Commissioner to enter into a contract without accepting any tender which he may receive after having invited them It is clear that the Municipal Council

6908/MM
File No

Powers of the Municipal Commissioner under the city Municipalities Act of 19

(10)

General and Revenue Secretariat

Serial No

have absolute powers not only to look into all tenders received but also to say that no tender should be accepted The Commissioner's contention that he has absolute powers in this regard is not correct Municipal Council have absolute powers to decide the manner in which the tenders should be disposed of

14) To conclude (1) the Municipal Council has powers to resolve that a particular license record should be brought for consideration of the Council and to consider that case

(ii) when once the order is passed by the Municipal Commissioner under Section 115 read with sub-section 3 of Section 245, the Municipal Council cannot revise his order, nor is Municipal Council competent to say that the Municipal Commissioner should not pass an order regarding issue of licenses because, he is given this power according to the provisions of the Act without any reservation except in those cases coming under clause (b) of Sub-section 6 of Section 115 which are appealable to the Council, and

(iii) the Municipal Council have powers to resolve that every tender should be opened in the Council and to pass such resolution as they deem fit in respect of the tenders opened

15) If approved the Commissioner will be intimated as opined in para 14

Secy
L&SG)

15) 10/4/52

No 335
Date 10/4

6908 — MI

General and Revenue Secretariat

Powers of Municipal Commissioner under the City Municipalities Act

File No (11) of 19

[App F III-2

WD 011428—GPB—40 000—13-7-51

Serial No

2 16/4

17) Before giving a ruling on the points raised by the Commr it is better to ascertain the practice in Mysore Please send a copy of Commr's letter confidentially to Sri H S Swaminathan & call for his comments along with wht is practice in Mysore

H S
17/4

11/4

18) Dft D o Letter to the Municipal Commr., Mysore City Municipality is put up for approval

Sec 16/4/52

SAS, 16/4/52

19) Issue

11
16/4

20

The H Commr Mysore city

2 1118/Encl 1 dated 21 4 52

20) R D o reminder is put up for approval.

Sec 16/10

16/10

16/(10)/51

SAS 16/4

21) Issue

11
17/10

12051/dated 25 10 52

Reminder

Sec'n 25/10

22) D o Reminder is put up for approval

23) Issue

11
22/11

NOTE—Contn Sheet

Sec 20/11

SAS 20/11

File No 6908/Rel (12) Power of Municipal Commissioner under the Municipalities Act — of 19 — General and Revenue Secretariat

Serial No

To

The Municipal Commr
Mysore City Municipality

L 15037 dated 27-11-52
Do Reminder —

Secy Ag 28/11/52

24) The Municipal Commr, Mysore city has not sent his reply despite of Reminders. This is an important matter in which the Municipal Commr Dvg city has sought certain clarification and is pending since 6-2-1952 awaiting reply from the Mysore city Municipality

25) Subt for orders - Ref para 17 above.

Rao 28/11/53
SRV 28/11/53

26) Put up a draft letter to Commr Mysore, for approval of the Secretary

3/11

27) A draft D.O. letter to the Commr Mysore city MCity put up for approval

Rao 2/12/53
SRV 2/12

5/12

Secy Ag

28) 6/12

29) Issue
SRA 7/12

7/12

SECRETARIAT 2646 D BASE

6908
MC 52 (3)

Power of Municipal Commissioner Under the Municipalities Act-

To Sri Abdul Rahim
MC Commr Mysore

SecA 17/2/53 D.O L 20152 dated 14-2-53
17/2

Reminds

30) One ordinary reminder and three D O Reminders have been issued No ~~reply~~ last D O Reminder was issued ~~Hence~~ on 14/2/53 ~~some person may want clarification from the Municipal Commissioner~~ Mysore ~~City Municipality~~ Sri Yazar Ahmed ~~Bhoot Rahim~~ is now not the Commissioner either at Davanagere or at Mysore for orders whether further consideration is necessary or the matter is treated as closed for want of particulars as required at Para 17

23/2 ~~Another D O reminder may be issued~~

Secy 24/2 31) Put up another D O letter above Hence this before me on 15-1-1954 28/2

32) Draft D O ~~letter~~ reminder is for approval

Secy 29/2 33) Issue

Secy 28/2

To one MC Court Mysore
D.O No L 12845 of 4/53

34) Reminds for orders — Refer Para 31 supra

RS 13/1 Secy 5/4

35) Replies Nil Pl confirm the note immediately 5/11

SecA 6/11

6719 jml 15-3-54 6908 & ml

Clarification (14) of the Powers of the Commissioners under C.P. Act 1953

295 Laws 54-55

From the Under Secy
to C2 & R 170-119/53 dt 18th [illegible] 54
forwarding a Note on the subject

737 36) Submit with the remarks of the M.C
Mtg for orders w/r to paras 17, 26 and
35 supra. The M.C has invited Reference to
Sections 246 to 249 and also to Sections
113 and 253 (Flags

37) The Law Secy may kindly be
10/4 sms 12/4 requested to offer his opinion
whether on the points mentioned in
Para 14

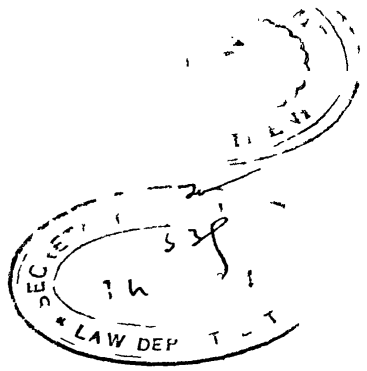
12/4

Secy
Law)

38) 13/4

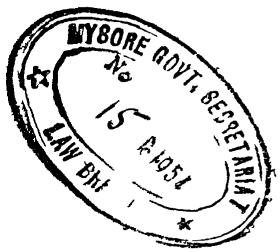
Law Secy)

14/4



63 39) Law
14/4/54

Sr N K M



(40) Two questions arise in this case The first is whether the Municipal Commissioner or the Municipal Council is competent to grant licenses for buildings The second is whether the Municipal Commissioner or the Municipal Council has to deal with the tenders relating to contracts Adverting to the first question, section 115 of the City Municipalities Act, 1933 as amended by Act XVI of 1950, relates to power of the Municipal Council to deal with licenses for construction of buildings According to this section it is virtually the Municipal Council that has to grant license for the construction of buildings, alterations etc But according to sec 245-of the same Act,"the Municipal Commissioner shall exercise the powers hereinafter specified, and such other executive powers as may be delegated to him by the municipal council under the provisions of this Act " As seen from the body of that section, power under section 115 of the Act is one of the powers hereinafter specified But there is a proviso to that section and according to that proviso the power under cl (b) of sub-section (6) of section 115 shall not be exercised by the Municipal Commissioner except subject to the general or special orders of the Municipal Council or, in the absence of such orders, with the previous approval of the Municipal Council Cl (b) of sub-section (6) of sec 115 relates to issue of a written notice for alteration, addition or demolition of the building Further, according to sec 249 of the Act, an appeal in respect of the order passed by the Municipal Commissioner under cl (b) of sub-sec (6) of sec 115 of the Act will lie to the Municipal Council Virtually, except with regard to cl (b) of sub-sec (6) of sec 115 of the Act, the Municipal Commissioner has full powers under the other

(16) ~~6308/174~~ 6719/Re

provisions of sec 115, and the discretion of the Municipal Commissioner in the other provisions cannot be interfered with by the Municipal Council Virtually it is in respect of cl (b) of sub-sec (6) of sec 115 of the Act that the Municipal Council has powers

41) With regard to the second question which relates to tenders, according to sec 253 of the Act, the Municipal Commissioner shall at least seven days before entering into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding five hundred rupees, give notice by advertising in the local newspapers, inviting tenders for such contract, and according to sub-sec.(3) of the section, the Municipal Council may, subject to the provisions of section 41, authorise the Municipal Commissioner, for reasons which shall be recorded in its proceedings, to enter into a contract without inviting tenders as herein provided or without accepting any tender which he may receive after having invited them Practically, the powers of the Municipal Commissioner urder this section are subject to section 41 of the Act Section 41 relates to contracts and cl (5) of that section relates to calling for tenders According to this clause, before any contract for the supply of materials or goods or for the execution of any work which will involve an expenditure exceeding five hundred rupees is entered into, tenders shall be publicly invited in such manner as may, from time to time, be determined by the Municipal Council from persons willing to enter into such contract and, when the estimated value exceeds fifteen thousand rupees, no such contract shall be entered into without the previous approval of the Government or of an officer duly authorised by the Government in this behalf

~~6908/III~~ 6719/me

Powers of the Mil Comm under the Ahj Mlties Act

895

LAW 52-55

42) Ordinarily, according to cl (5) of sec 41 of the Act, whenever the cost of the work involves more than Rs 500 and does not exceed Rs 15,000, tenders have to be called for But at the same time according to cl (3) of sec 253 of the Act, the Municipal Council may authorise the Municipal Commissioner for reasons which shall be recorded in its proceedings to enter into a contract without inviting tenders or without accepting any tender which he may receive Thus, if the Municipal Commissioner is empowered by the Municipal Council under cl (3) of sec 253 he can act on his own initiative without calling for tenders or even without accepting any tender if tenders are called for If the Municipal Commissioner is not empowered by the unicipal Council, the procedure laid down in cl (5) of sec 41 of the Act has to be followed

GOVT 1994 17 JUN 1954 SO DEPARTMENT

22/6

44)

24/6

43) Secretary - L S G) 16/6/54

Yes Sir, Under Section 253 (cl. 3) of the Bgme Ahj Mlties Act 1933, the Mil Comms can act on his own initiative if he is empowered by the Mil Co For orders whether the Legal views expressed above may be communicated to the Mil Comms

SECRETARY TO GOVERNMENT 3 JUL 1954 L S G D PARTMENT

DS 23/6 Secy 28/6

44) Other wise desirable to empower the Mil Comms to ~~issue~~ enter into Contracts without the approval of the Govt

The Govt Law Secy will be communicated

Secy Dept)

45) Yes. 31/7 & 5/7.

(18)

Powers of the M Comm under the City Motor Act Mysore City 1964

6719
M

(46) Submit with a draft letter for approval

9/8/77 10/10/77

Dswm 11/10

2

The M Comm Davangere - MKS
Lr 72/77-78-S dt 22.7.84
Note - that it is not desirable to empower the M Comm to enter into such contracts without the approval of the M-C
Copy to the M Comm Mysore - MKS
Lr 73/77 dt 22.7.84

11/8
Note
2

Appendix F G—1]

SUBJ

Confidential

(1)

M Hazeer Ahmed B S
Municipal Commissioner

DAVANGERE

D O No P.C 25/51-52

Date 31st Jan 1952

Sir,

I I write to state that the provisions of the City Municipalities act are not fully enforced in this City Municipality In many cases, powers to be exercised by the Municipal Commissioner are being exercised by the Municipal Council Probably this tendency has incfeased of late and in matters where there are definite statutory provisions in the Act that certain powers have to be exercixed by the Municipal Commissioner solely, the Council is in the habit of passing resolutions to the effect that these matters should be disposed off by the Council despite the statutory provisions

for a note 1/2

2 For example-Granting of licenses for construction of buildings- which the Act empowers the Municipal Commissioner under Section 115 of the City Municipalities Act for grant or rejecting licenses, the resolutions in such cases are being passed by the Municipal Council to the effect that particular license papers should be brought before the - Council for their consideration In respect of calling for tenders and accepting them under Section 253 of the Mysore City Municipalities Act ~~xxx xxxxxxx xxxxx~~ the Council has recently passed in their Municipal Meeting held on 23-12-1951 that all tenders must be opened in the Council alone This has been done not because the Council have no confidence in the Municipal Commissioner, but due to the unhealthy atmosphere that is prevailing at present in the House

3 I am to request you therefore to kindly clarify whether the Municipal Council by passing a resolution of the above kind could intervene and supersede the statutory powers granted to the Municipal Commi

Examined by

VD 015460—GPB—30 000—25 9 51

(2)

ssioner under the City Municipalities Act. I am making this reference to Government to make the point more clear and to have definite instructions from Government for future guidance as the present situation of the Council is such that if the provisions of the Act are not enforced rigidly, it would only make the work of the Executive Officers very difficult, but will also tend to create unnecessary trouble in the Council and thus hamper the smooth running of the Municipal Administration.

Yours sincerely,

To

Sri.K Balasubramanyam M.Sc ,
Secretary to Government,
Local Self Government Department,
Bangalore

HNM/2

③

Appendix F G—1]

SUBJECT Powers of the Car under the City Municipalities Act

Confidential

Section

File No

Serial No

2 Copies

No L 1118/Ex/ 51-52

*Diary No of letter replied to

To

The Municipal Commr.
Kandy City Municipality
(through the proper channel)
(By name)

General and Revenue Secretariat

( )

the 19

Sir,

Date of issue

I am directed to forward herewith a copy of (letter No. P C 95/51 Sr dated 31.1.52 received from the Municipal Commr., Dawagama City Municipality on the above subject and to request you kindly to furnish your remarks as also to consult the practice obtaining and Kandy City in regard to these matters

Signed by

Yours Sincerely

1614

Secy

List of enclosures

Copied by

Rec 16/4/52

Examined by

VD 015460—GPB—30 000—25 9 51

(4)

L 1118 Ele 1
21.4.52

CONFIDENTIAL

Dear Sir,

Subject powers of the Commissioner under the City Municipalities Act

I am desired to forward herewith a copy of letter No P C 25/51-52 dated 31st January 1952 received from the Municipal Commissioner, Davangere City Municipality, on the above subject and to request you to kindly furnish your remarks as also ~~to intimate~~ the practice obtaining in Mysore City in regard to these matters.

Yours sincerely,

Sri M S Swaminathan, M A , B Sc
Municipal Commissioner,
Mysore City Municipality,
MYSORE.

knr-2/18 4

(5)

D.O No. L 20152

Dt 14/2/53

Dear Sri Abdul Rahim,

Please refer to my letter no L 1118 dated 31 4 53 Regarding the powers of the Commissioner under the Mysore City Municipalities Act.

In a controversial case connected with the disposal of tenders in the Davangere City Municipality the Commissioner of Govt sought clarification on certain points, as the refusal of the municipal Council to accept tenders opened by the Commissioner resulted in a fairly heavy loss to the Municipality Govt desired to be apprised of the practice obtaining in the Mysore City Municipality also for a proper examination of the question A reference was accordingly made to you in April last It is regretted that in such an important matter your reply has been unreasonably delayed.

As this is an urgent

Received 14/2/58 at 11 40 AM

matter calling for a quick decision ~~Reply~~ your Reply to this office letter of 31 & 5'2 may please be sent immediately

Yours faithfully

To

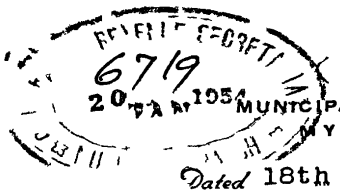
The Municipal Commissioner
Mysore City Municipality.
(City name)

Rec 2/2/53 for

CONFIDENTIAL

N LAKSHMAN RAU, B Sc, B L,
Commissioner,

No C2 PR 170-119/53-54



Dated 18th January 1954

Dear sir,

C. M. 86-54-4

Subject Powers of the Municipal Commissioner under the City Municipalities Act

Your letter No D O L 1118 dated 21-4-1952 and subsequent reminders

---

Powers of the Municipal Commissioner under the Act are contained in Sections 245 to 249 of the Mysore City Municipalities Act Sections 245 to 248 deal with powers conferred upon the Commissioner under the Act, certain powers which are deemed inherent though not expressly authorised, certain independent powers exercisable without sanction of the Municipal Council Section 249 deal with orders of the Commissioner which are not even appealable to Council

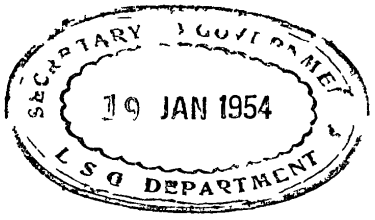
According to provisions of Sec 249 of the Act as amended in 1950 (No XVI) the Commissioner has to exercise all the powers under Section 115 (granting licenses for construction of buildings) and order passed under this Section are not even appealable to the Council unless it is an order under sub-clause (b) of Clause iii of Sec (6) of Sec 115 Hence a resolution passed by the Council to enable them to exercise any of the powers vested in Sec 115, will offend the provisions of the Act In this Municipality the powers under Sec 115 are exercised by the Municipal Engineer under the orders of the Municipal Commissioner

Next regarding tenders, it is the Municipal Commissioner that is empowered in the Act to call for tenders and accept it etc , under Sec 253 (1) and (2) Such being the case to insist on the tenders being opened in the Council also seems to be opposed to the statute It is open to the Council to peruse these while sanctioning tenders

(8)

Tenders are usually invited in Mysore City by the Commissioner or Sectional Officers and opened by him or by such officers under his orders

Tenders are not opened in the Council



Yours sincerely,

Sri G Venkatakrishna Rao, I A S ,
Secretary to Government,
L S G and Planning Departments,
Old Public Offices,
Bangalore 1

Very urgent
Continue the
note - pm meeting

19/1

Appendix F G—1]

SUBJECT Powers of the Municipal Commissioner under the city Police Act 1933

Section C M

File No 86-54

Serial No 5

Diary No of letter replied to

No L 4472/81

To 22-7-54

Mysore Government Secretariat

( )

the *195*

Date of issue

Signed by

The Pol Commr Davangere City

(Thro the proper channel)

Sir,

With Reference to your D O letter No P C 257/51-52 Dt 31/1/52 seeking clarification on the above subject I am directed to state that the following questions arise in this case. The first as to whether the Pol Commr or the Pol Chief is competent to grant licenses for buildings. The second as to whether the Pol Commr or the Pol Chief has to deal with the tenders relating to Contract-

Pl type paras no 41 and 42 in toto

List of enclosures

Copied by

Examined by

WD 03545—GPB—40,000—25-6-53

Adverting to the first question, reference is invited to Section 115 of the City of Madras Act 1933 as amended by Act XII of 1950, relating to the power of the Madras Corporation to deal with licenses for Construction of buildings

According to this section it is virtually the Madras Corporation that has to grant license for the Construction of buildings, alterations etc

But according to section 245 of the same Act, the Madras Commr shall exercise the powers hereinafter specified and such other executive powers as may be delegated to him by the Madras Corporation under the provisions of this Act ~~Apart from the body of that section power under section 115 of the Act~~ is one of the powers hereinafter specified

But there is a proviso to that section and according to that proviso the power under clause (e) of sub-section (6) of Section 115 shall not be exercised by the Madras Commr except subject to the general or special orders of the Madras Corporation, or in the absence of such orders with the previous approval of the Madras Corporation

Appendix F G—1]

SUBJECT

(11)

Section

File No

Serial No

Diary No of letter replied to

No 2

To

Mysore Government Secretariat

( )

the *195*

Date of issue

Signed by

List of enclosures

Copied by

Examined by

Clause (b) of Sub-Section (6) of Section 115 relates to passing of written orders for alteration or cancellation of the following further according to Section 245 of the Act, an appeal in respect of the order passed by the PH Comm under Clause (b) of Sub Section (6) of Section 115 of the Act will lie to the PH Ct. Unreservedly accept with regard to Cl (b) of Sub-Section (6) of Section 115 of the Act, the PH Comm has full powers under the Act

WD 03545—GPB—40,000—25-6-53

Adverting to the first Question, reference is invited to Section 115 of the Calcutta Municipal Act 1933 as amended by Act XII of 1950, relating to the power of the Municipal Corporation to deal with licenses for Construction of buildings

According to this section it is virtually the Municipal Corporation that has to grant license for the Construction of buildings, alterations etc But according to section 245 of the same Act, the Municipal Commissioners shall exercise the powers hereinafter specified and such other executive powers as may be delegated to him by the Municipal Corporation under the provisions of this Act ~~Apart from the body of that section~~ power under section 115 of the Act is one of the powers hereinafter specified according to But there is a proviso to that section and according to that proviso the power under clause (e) of sub-section (6) of Section 115 shall not be exercised by the Municipal Commissioners except subject to the general or special orders of the Municipal Corporation, or in the absence of such orders with the previous approval of the Municipal Corporation

Appendix F G—1]

SUBJECT

(11)

Section

File No

Serial No

Diary No of letter replied to

No 2

To

Mysore Government Secretariat

( )

the *195*

Clause (b) of Sub-Section (6) of Section 115 relates to issue of written notice for alteration addition or deduction of the building further according to Section 249 of the Act, an appeal in respect of the order passed by the P/I Comm under Clause (b) of Sub Section (6) of Section 115 of the Act will lie to the P/I Ct Unreliably except with regard to Cl (b) of Sub-Section (6) of Section 115 of the Act, the P/I Comm has full powers under the Act

Date of issue

Signed by

List of enclosures

Copied by

Examined by

WD 03545—GPB—40 000—25-6-53

(12)

provisions of Section 115 and the discretion of the M Comm as to the order that provisions cannot be enforced forth by the M Cl Vertically stands in respect of Cl (b) of Sub-Section (6) of Sec 115 of the Act that the M Cl has powers with regard to the second question which relates please type para 4 / the 2 of the portion in toto x——x x x

In view of the above legal complications it is not desirable to empower the M Comm to enforce contracts forthat the approval of the M. Cl

L. Li 423 / 61 54

Copy to the M. Comm Hyderabad MS for information w/r to his letter No C2 PR 170-119/52-Ad. A 18-1-54

VW 18/1/54

(13)

L 4422/CM 86-54-5 Mysore Government
xxxxxxxxxxxxxxx
(Municipal Branch)
2-2-54

The
L.S G & Planning Departments

To

The Municipal Commissioner,
Davangere City Municipality
(thro' the President)

Sir,

Subject Powers of the Municipal Commissioner under the City Municipalities Act, 1933

With reference to your D O letter No P C 25/51-52 dated 31st January 1952 seeking clarification on the above subject, I am directed to state that two questions arise in this case the first is whether the Municipa Commissioner or the Municipal Council is competent to grant licenses for buildings The second is whether the Municipal Commissioner or the Municipal Council has to deal with the tenders relating to contracts Adverting to the first question, Section 115 of the City Municipalities Act, 1933 as amended by Act XVI of 1950, relates to power of the Municipal Council to deal with licenses for construction of buildings According to this section it is virtually the Municipal Council that has to grant license for the construction of buildings, alterations etc , Put according to Section 245 of the same Act, "the Municipal Commissioner shall exercise the powers hereinafter specified, and such other executive powers as may be delegated to him by the Municipal Council under the provisions of this Act " As seen from the body of that Section, power under section 115 of the Act is one of the powers hereinafter specified But there is a proviso to that Section and according to that proviso the power under clause (b) of sub-section (6) of Section 115 shall not be exercised by the Municipal Commissioner except subject to the general or special orders of the Municipal Council or, in the absence of such orders, with the previous approval of the Municipal Council Clause (b) of sub-section (6) of Section115 relates to issue of a written notice for alteration, addi-

(14)

addition or demolition of the building. Further, according to Section 249 of the Act, an appeal in respect of the order passed by the Municipal Commissioner under clause (b) of sub-section (6) of Section 115 of the Act will lie to the Municipal Council. Virtually, except with regard to clause (b) of sub-section (6) of Section 115 of the Act, the Municipal Commissioner has full powers under the other provisions of Section 115, and the discretion of the Municipal Commissioner in the other provisions cannot be interfered with by the Municipal Council. Virtually it is in respect of clause (b) of Sub section (6) of Section 115 of the Act that the Municipal Council has powers

With regard to the second question which relates to tenders according to Section 252 of the Act, the Municipal Commissioner shall at least seven days before entering into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding five hundred rupees, give notice by advertising in the local newspapers, inviting tenders for such contract, and according to sub-section (3) of the Section, the Municipal Council may, subject to this provisions of Section 41, authorise the Municipal Commissioner, for reasons which shall be recorded in its proceedings, to enter into a contract without inviting tenders as herein provided or without accepting any tender which he may receive after having invited them Practically, the powers of the Municipal Commissioner under this Section are subject to Section 41 of the Act Section 41 relates to contracts and clause (b) of that Section relates to calling for tenders According to this clause, before any contract for the supply of materials or goods or for the execution of any work which will involve an expenditure exceeding five hundred rupees is entered into, tenders shall be publicly invited in such manner as may, from time to time, be determined by the Municipal Council from persons willing to enter into such contract and, when the estimated value exceeds fifteen thousand rupees, no such contract shall be entered into without the previous approval of the Government or of an officer duly authorised by the Government in

in this behalf

Ordinarily, according to Clause (5) of Section 41 of the Act, whenever the cost of the work involves more than Rs 500 and does not exceed Rs 15,000/- tenders have to be called for But at the same time according to clause (3) of Section 233 of the Act, the Municipal Council may authorise the Municipal Commissioner for reasons which shall be recorded in its proceedings to enter into a contract without inviting tenders or without accepting any tender which he may receive. Thus, if the Municipal Commissioner is empowered by the Municipal Council under Clause (3) of Section 233, he can act on his own initiative without calling for tenders or even without accepting any tender if tenders are called for If the Municipal Commissioner is not empowered by the Municipal Council, the procedure laid down in clause (5) of Section 41 of the Act has to be followed

In view of the above legal implications, it is not desirable to empower the Municipal Commissioner to enter into contracts without the approval of the Municipal Council

Yours faithfully,

SD/V Hanumanthappa
Asst Secretary to Government,
L S G & Planning Departments.

knr-3/18-7 Memo No L 4433 / 22-2-54

Copy of the above is forwarded to the Municipal Commissioner, Mysore City Municipality, for xfax information with reference to his letter No C2 P R 170-119/53-54 dated 18-1-1954,

(V Hanumanthappa)
Asst Secretary to Government,
L S G & Planning Departments

N-18
C-15